

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEVIN AND DR. LUCILLE LEVIN, :

Plaintiffs, :

v. :

BANK OF NEW YORK, *et al.*, :

Defendants. :

: Case No. 09-Civ-5900 (RPP)

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THE BANK OF NEW YORK MELLON, *et al.* :

Third-Party Plaintiffs, :

v. :

ESTATE OF MICHAEL HEISER, *et al.*, :

Third-Party Defendants. :

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**NOTICE OF THE ESTATE OF MICHAEL HEISER, ET AL.'S
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on September 29, 2010, at 3:00 p.m., or as soon thereafter as counsel may be heard, in Courtroom 24A of the above-entitled Court located at 500 Pearl Street, New York, New York 10007, (1) the Estate of Michael Heiser, deceased; (2) Gary Heiser; (3) Francis Heiser; (4) the Estate of Leland Timothy Haun, deceased; (5) Ibis S. Haun; (6) Milagritos Perez-Dalis; (7) Senator Haun; (8) the Estate of Justin R. Wood, deceased; (9) Richard W. Wood; (10) Kathleen M. Wood; (11) Shawn M. Wood; (12) the Estate of Earl F. Cartrette, Jr., deceased; (13) Denise M. Eichstaedt; (14) Anthony W. Cartrette; (15) Lewis W. Cartrette; (16) the Estate of Brian McVeigh, deceased; (17) Sandra M. Wetmore; (18) James V. Wetmore; (19) the Estate of Millard D. Campbell, deceased; (20) Marie R. Campbell; (21) Bessie A. Campbell; (22) the Estate of Kevin J. Johnson, deceased; (23) Shyrl L. Johnson; (24) Che G. Colson; (25)

Kevin Johnson, a minor, by his legal guardian Shyrl L. Johnson; (26) Nicholas A. Johnson, a minor, by his legal guardian Shyrl L. Johnson; (27) Laura E. Johnson; (28) Bruce Johnson; (29) the Estate of Joseph E. Rimkus, deceased; (30) Bridget Brooks; (31) James R. Rimkus; (32) Anne M. Rimkus; (33) the Estate of Brent E. Marthaler, deceased; (34) Katie L. Marthaler; (35) Sharon Marthaler; (36) Herman C. Marthaler III; (37) Matthew Marthaler; (38) Kirk Marthaler; (39) the Estate of Thanh Van Nguyen, deceased; (40) Christopher R. Nguyen; (41) the Estate of Joshua E. Woody, deceased; (42) Dawn Woody; (43) Bernadine R. Beekman; (44) George M. Beekman; (45) Tracy M. Smith; (46) Jonica L. Woody; (47) Timothy Woody; (48) the Estate of Peter J. Morgera, deceased; (49) Michael Morgera; (50) Thomas Morgera; (51) the Estate of Kendall Kitson, Jr., deceased; (52) Nancy R. Kitson; (53) Kendall K. Kitson; (54) Steve K. Kitson; (55) Nancy A. Kitson; (56) the Estate of Christopher Adams, deceased; (57) Catherine Adams; (58) John E. Adams; (59) Patrick D. Adams; (60) Michael T. Adams; (61) Daniel Adams; (62) Mary Young; (63) Elizabeth Wolf; (64) William Adams; (65) the Estate of Christopher Lester, deceased; (66) Cecil H. Lester; (67) Judy Lester; (68) Cecil H. Lester, Jr.; (69) Jessica F. Lester; (70) the Estate of Jeremy A. Taylor, deceased; (71) Lawrence E. Taylor; (72) Vickie L. Taylor; (73) Starlina D. Taylor; (74) the Estate of Patrick P. Fennig, deceased; (75) Thaddeus C. Fennig; (76) Catherine Fennig; (77) Paul D. Fennig; and (78) Mark Fennig (collectively, the “**Heisers**”), by their undersigned attorneys DLA Piper LLP (US), will and do hereby move for partial summary judgment as to their first priority lien interest in the BONY Blocked Wire Transfers as defined in the Memorandum of Law in Support of the Heisers’ Motion.

Said motion will be made upon the grounds that there are no triable issues of material fact; that as a matter of law, the Heisers are entitled to an order declaring that they have a first priority lien interest in the BONY Blocked Wire Transfers.

The Heisers' motion is based on this Motion, the Memorandum of Law in Support of this Motion; the Local Rule 56.1 Separate Statement of Undisputed Facts; the Local Rule 56.1 Separate Statement of Dispute Facts; the Declaration of David B. Misler filed concurrently herewith; the evidence; the records, pleadings and files in this action; and upon such oral and documentary evidence as may be presented at the hearing of this motion.

Dated: New York, New York
September 13, 2010



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